

# EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

SMARTMATIC USA CORP.,  
SMARTMATIC INTERNATIONAL  
HOLDING B.V., and SGO  
CORPORATION LIMITED,

Plaintiffs,

v.

MICHAEL J. LINDELL and MY  
PILLOW, INC.,

Defendants.

Case No. 22-cv-0098-JMB-JFD

**DECLARATION OF TIMOTHY FREY IN SUPPORT OF SMARTMATIC'S  
MOTION TO EXCLUDE THE OPINION AND TESTIMONY OF BENJAMIN  
COTTON**

I, Timothy Frey, pursuant to 28 U.S.C. § 1764, hereby declare as follows:

1. I am over the age of 18, I am competent to make this declaration, and I have personal knowledge of the facts stated herein. The facts are true to the best of my knowledge, information, and belief, and if called upon to testify as a witness, I could and would testify competently to them.

2. I am a partner at the law firm Benesch, Friedlander, Coplan & Aronoff, LLP, and I represent Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, "Smartmatic") in the above-captioned lawsuit.

3. Attached as Exhibit 1 is a true and correct copy of a September 29, 2023, email exchange between Julie Loftus, counsel for Smartmatic, and Abraham Kaplan, former counsel for Michael Lindell and My Pillow, Inc. (collectively, “Defendants”).

4. Attached as Exhibit 2 is a true and correct copy of an October 3, 2023, email exchange between Julie Loftus, counsel for Smartmatic, and Abraham Kaplan, former counsel for Defendants.

5. On September 29, 2023, former counsel Defendants requested that Smartmatic make available the electronic voting machine that was identified in Smartmatic’s expert’s report. (Ex. 1.)

6. On the same day, Smartmatic agreed to make the electronic voting machine available to Defendants for inspection. (Ex. 1.) Smartmatic informed counsel for Defendants that they must serve a notice for inspection and that the parties must agree upon an inspection protocol. (Ex. 1.)

7. On October 3, 2023, Smartmatic provided a draft inspection protocol and informed counsel for Defendants that they still had not sent a notice of inspection. (Ex. 2.)

8. Counsel for Defendants did not respond to the October 3, 2023 email from Smartmatic’s counsel.

9. To date, Defendants have not served Smartmatic with a notice of inspection for the electronic voting machine inspected by Smartmatic’s expert.

10. Since September 29, 2023, Defendants have not made a request to inspect Smartmatic’s electronic voting machine.

11. Smartmatic has not received a supplement to Benjamin Cotton's September 22, 2023 Declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



---

Timothy M. Frey

Executed on November 13, 2024

# EXHIBIT 1

**From:** [Loftus, Julie](#)  
**To:** [Abraham S. Kaplan](#); [Bloom, Michael](#)  
**Cc:** [Andrew Parker](#); [Lori Johnson](#); [Cody Blades](#); [Nate Greene](#); [Jill Thorvig](#); [Roxanne A. Russell](#); [Frey, Timothy](#); [Ward, Jamie](#)  
**Subject:** RE: Smartmatic et al. v. Lindell et al., Case No. 22-cv-00098  
**Date:** Friday, September 29, 2023 1:56:15 PM  
**Attachments:** [image001.png](#)

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Abe,

Requesting an inspection is Defendants' responsibility. *See* Fed. R. Civ. P. 34(a)(2). Regardless, we will assume a Rule 34 notice is forthcoming and circulate a proposed inspection protocol.

Best,  
Julie



Julie Loftus  
(she/her/hers)  
Associate | Litigation  
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**From:** Abraham S. Kaplan <[Kaplan@parkerdk.com](mailto:Kaplan@parkerdk.com)>  
**Sent:** Friday, September 29, 2023 1:35 PM  
**To:** Loftus, Julie <[JLoftus@beneschlaw.com](mailto:JLoftus@beneschlaw.com)>; Bloom, Michael <[MBloom@beneschlaw.com](mailto:MBloom@beneschlaw.com)>  
**Cc:** Andrew Parker <[Parker@parkerdk.com](mailto:Parker@parkerdk.com)>; Lori Johnson <[Johnson@parkerdk.com](mailto:Johnson@parkerdk.com)>; Cody Blades <[Blades@parkerdk.com](mailto:Blades@parkerdk.com)>; Nate Greene <[Greene@parkerdk.com](mailto:Greene@parkerdk.com)>; Jill Thorvig <[Thorvig@parkerdk.com](mailto:Thorvig@parkerdk.com)>; Roxanne A. Russell <[Russell@parkerdk.com](mailto:Russell@parkerdk.com)>; Frey, Timothy <[TFrey@beneschlaw.com](mailto:TFrey@beneschlaw.com)>; Ward, Jamie <[JWard@beneschlaw.com](mailto:JWard@beneschlaw.com)>  
**Subject:** RE: Smartmatic et al. v. Lindell et al., Case No. 22-cv-00098

Julie,

Since the date Plaintiffs' counsel represented to the court that the machine would be produced after the expert reporting deadline, Plaintiffs have not reached out to Defendants on this issue nor did you propose any protocols. Expert rebuttal deadline is October 20.

It is now already a week after Plaintiffs' expert report was submitted, send over as soon as possible Plaintiffs' proposed protocols which you reference in your email.

PARKER | DANIELS | KIBORT  
ABRAHAM S. KAPLAN  
ATTORNEY

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612 355 4100

*This is a confidential communication from Parker Daniels Kibort LLC to the intended recipient. If you received this communication by mistake, please delete it and notify the sender immediately.*

**From:** Loftus, Julie <[JLoftus@beneschlaw.com](mailto:JLoftus@beneschlaw.com)>

**Sent:** Friday, September 29, 2023 1:23 PM

**To:** Abraham S. Kaplan <[Kaplan@parkerdk.com](mailto:Kaplan@parkerdk.com)>; Bloom, Michael <[MBloom@beneschlaw.com](mailto:MBloom@beneschlaw.com)>

**Cc:** Andrew Parker <[Parker@parkerdk.com](mailto:Parker@parkerdk.com)>; Lori Johnson <[Johnson@parkerdk.com](mailto:Johnson@parkerdk.com)>; Cody Blades <[Blades@parkerdk.com](mailto:Blades@parkerdk.com)>; Nate Greene <[Greene@parkerdk.com](mailto:Greene@parkerdk.com)>; Jill Thorvig <[Thorvig@parkerdk.com](mailto:Thorvig@parkerdk.com)>; Roxanne A. Russell <[Russell@parkerdk.com](mailto:Russell@parkerdk.com)>; Frey, Timothy <[TFrey@beneschlaw.com](mailto:TFrey@beneschlaw.com)>; Ward, Jamie <[JWard@beneschlaw.com](mailto:JWard@beneschlaw.com)>

**Subject:** RE: Smartmatic et al. v. Lindell et al., Case No. 22-cv-00098

Abe,

As Smartmatic represented in its letter to Judge Docherty dated September 27, 2023, Smartmatic will make available for inspection the ballot-marking device Smartmatic's expert inspected. The inspection will occur pursuant to the parties' stipulated protective order, and subject to an agreed inspection protocol put in place prior to inspection.

Julie



Julie Loftus

(she/her/hers)

Associate | Litigation

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**From:** Abraham S. Kaplan <[Kaplan@parkerdk.com](mailto:Kaplan@parkerdk.com)>

**Sent:** Friday, September 29, 2023 12:51 PM

**To:** Bloom, Michael <[MBloom@beneschlaw.com](mailto:MBloom@beneschlaw.com)>

**Cc:** Andrew Parker <[Parker@parkerdk.com](mailto:Parker@parkerdk.com)>; Lori Johnson <[Johnson@parkerdk.com](mailto:Johnson@parkerdk.com)>; Cody Blades <[Blades@parkerdk.com](mailto:Blades@parkerdk.com)>; Nate Greene <[Greene@parkerdk.com](mailto:Greene@parkerdk.com)>; Jill Thorvig <[Thorvig@parkerdk.com](mailto:Thorvig@parkerdk.com)>; Roxanne A. Russell <[Russell@parkerdk.com](mailto:Russell@parkerdk.com)>; Loftus, Julie <[JLoftus@beneschlaw.com](mailto:JLoftus@beneschlaw.com)>

**Subject:** RE: Smartmatic et al. v. Lindell et al., Case No. 22-cv-00098

Mike,

Will Plaintiffs be producing the election machine identified in Plaintiffs' expert report?

PARKER | DANIELS | KIBORT

ABRAHAM S. KAPLAN

ATTORNEY

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*This is a confidential communication from Parker Daniels Kibort LLC to the intended recipient. If you received this communication by mistake, please delete it and notify the sender immediately.*



# EXHIBIT 2

**From:** [Loftus, Julie](#)  
**To:** [Abraham S. Kaplan](#); [parker@parkerdk.com](mailto:parker@parkerdk.com); [Joe Pull](#); [green@parkerdk.com](mailto:green@parkerdk.com); [Amanda Oliver](#); [Jill Thorvig](#); [Roxanne A. Russell](#)  
**Cc:** [Frey, Timothy](#); [Bloom, Michael](#); [Ward, Jamie](#); [Levine-Patton, Maura](#); [Bedell, James](#)  
**Subject:** Smartmatic/ Lindell - Inspection Protocol  
**Date:** Tuesday, October 3, 2023 8:49:58 AM  
**Attachments:** [2023.10.03 Inspection Protocol.pdf](#)

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Abe,

Smartmatic is still waiting for a notice of inspection. In the meantime, find attached to this communication Smartmatic's draft inspection protocol.

Regards,

Julie



Julie Loftus

(she/her/hers)

Associate | Litigation

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